



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

Jeremy Hassevoort, Authorized Representative
Rabbit River Transport II, LLC
A5717 138th Ave
Holland, Michigan 48423

Re: Finding of Violation
Rabbit River Transport II, LLC
Holland, Michigan

Dear Mr. Hassevoort:

The U.S. Environmental Protection Agency is issuing the enclosed Finding of Violation (FOV) to Rabbit River Transport II, LLC (you). We find that you have violated Sections 203(a)(3)(A) and (B) of the Clean Air Act (CAA), 42 U.S.C. §§ 7522(a)(3)(A) and (B). As summarized in the attached FOV, we have determined that you have removed and/or rendered inoperative devices or elements of design installed on or in motor vehicles or motor vehicle engines, and installed parts or components that bypass, defeat, or render inoperative elements of design of those engines that were installed by the original equipment manufacturer in order to comply with CAA emission standards.

We are offering you an opportunity to confer with us about the violations alleged in the FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us information responsive to the FOV prior to the conference date.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Sarah Clark. You may call her at (312) 886-9733 or email her at clark.sarah@epa.gov to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,

**MICHAEL
HARRIS**

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Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division

Enclosure: SBREFA fact sheet

cc: Jenine Camilleri, Enforcement Unit Supervisor
Air Quality Division
Michigan Department of Environment Great Lakes and Energy

Rex Lane, Air Quality Division District Supervisors, Kalamazoo

Timothy A. Hoesch, Esq., Hoesch & Vander Ploeg, P.L.C., Counsel for Rabbit River

include, among other things, a description of the HDDEs, their emission control systems, all auxiliary emission control devices and the engine parameters monitored.

5. To meet the emission standards in 40 C.F.R. Part 86, HDDE manufacturers employ many devices and elements of design. “Element of design” means “any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine.” 40 C.F.R. § 86.094-2.
6. One element of design that HDDE manufacturers employ is retarded fuel injection timing as a primary emission control strategy for NO_x emissions. Common emission control devices used by HDDE manufacturers to meet emission standards include exhaust gas recirculation (EGR) systems, diesel oxidation catalysts (DOCs), diesel particulate filters (DPFs), and/or selective catalytic reduction (SCR) systems. Additionally, modern HDDEs are equipped with electronic control modules (ECMs), which continuously monitor engine and other operating parameters and control the emission control devices.
7. EPA promulgated regulations for motor vehicles manufactured after 2007 that require HDDE trucks to have onboard diagnostic systems to detect various emission control device parameters and vehicle operations. *See* Section 202(m) of the CAA, 42 U.S.C. § 7521(m) and 40 C.F.R. § 86.010-18.
8. Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A), prohibits “any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA] prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser.”
9. Section 203(a)(3)(B), of the CAA, 42 U.S.C. § 7522(a)(3)(B), prohibits “any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA], and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.”
10. It is also a violation for any person to cause any of the acts set forth in CAA section 203(a), 42 U.S.C. § 7522(a).

Background

11. Rabbit River owns and operates a fleet, that includes HDDE motor vehicles, located at A5717 138th Ave., Holland, Michigan.
12. Rabbit River is a “person,” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

13. On April 9, 2018, EPA representatives conducted an inspection of Rabbit River's Holland, Michigan facility to evaluate the company's compliance with Title II of the CAA. During the inspection, Rabbit River representatives indicated that the Rabbit River fleet consisted of forty to fifty class 8 semi-trucks and an estimated six additional owner-operator trucks.
14. On July 18, 2018, EPA issued to Rabbit River a request for information (Request) under Section 208 of the CAA, 42 U.S.C. § 7542, requesting documents related to all heavy-duty diesel engine motor vehicles that Rabbit River owned, operated, and/or leased between January 1, 2016 and the date of receipt of the Request and any parts or services that may affect motor vehicle emissions.
15. Between August 24, 2018 and January 28, 2020, Rabbit River provided EPA with its initial response to the Request and supplemental responses to subsequent email requests by EPA for information pursuant to the Request.
16. In Rabbit River's initial response to EPA's Request received on August 24, 2018, it objected and did not provide a response to ten out of fourteen requests.
17. In Rabbit River's supplemental response to EPA's Request received on September 21, 2018, Rabbit River maintained its original objections to the Request and stated that Rabbit River utilized one truck in its fleet which had been tuned.
18. In Rabbit River's supplemental response to EPA's Request received on December 21, 2018, Rabbit River provided maintenance records and a spreadsheet that listed the HDDE motor vehicles in its fleet. The spreadsheet identified several HDDE motor vehicles that had one or more emission control components removed or rendered inoperative and had one or more tunes installed that bypassed, defeated, or rendered inoperative those emission controls.
19. In Rabbit River's supplemental responses to EPA's Request received on or around May 9, 2019 and January 28, 2020, Rabbit River provided additional maintenance records and a revised spreadsheet. Rabbit River claimed its January 28, 2020 response as confidential.

Violations

20. EPA finds that Rabbit River violated Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A), by knowingly removing and/or rendering inoperative devices or elements of design installed in or on EPA-certified HDDEs that were in compliance with Title II of the CAA or causing these acts.
21. EPA finds that Rabbit River violated Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), by installing or causing the installation of parts and components on EPA-certified HDDEs that were in compliance with Title II of the CAA, where a principal effect of these parts and components was to bypass, defeat, or render inoperative elements of the HDDEs' design that control emissions of regulated air pollutants. Rabbit River knew or should have known that these parts or components were installed for such use or put to such use.

Environmental Impact of Violations

22. These violations may result in excess emissions of PM, NO_x, hydrocarbons, and other air pollutants and contribute to increased ground level ozone concentrations. PM, especially fine particulates containing microscopic solids or liquid droplets, can get deep into the lungs and cause serious health problems, including decreased lung function; chronic bronchitis; and aggravated asthma. Additionally, current scientific evidence links short-term NO_x exposures, ranging from 30 minutes to 24 hours, with adverse respiratory effects including airway inflammation in healthy people and increased respiratory symptoms in people with asthma. Exposure to ground-level ozone can also reduce lung function and inflame lung tissue; repeated exposure may permanently scar lung tissue.

Enforcement Authority

23. EPA may bring an enforcement action for these violations under its administrative authority or by referring this matter to the United States Department of Justice with a recommendation that a civil complaint be filed in federal district court. CAA §§ 204 and 205, 42 U.S.C. §§ 7523 and 7524. Any person who violates Section 203(a)(3)(A) and (a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(A) and (a)(3)(B), is subject to an injunction under Section 204 of the CAA, 42 U.S.C. § 7523, and a civil penalty of up to \$3,750 for violations that occurred through November 2, 2015 and \$4,819 for each violation that occurred after November 2, 2015 under Section 205(a) of the CAA, 42 U.S.C. § 7524(a), and 40 C.F.R. § 19.4.

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Michael D. Harris
Division Director
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